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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Tenth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)*
OF THE 18th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 13 May 1994, at 3.55 p.m.

Chairperson: Mr. ALSTON

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* The summary record of the first part (closed) of the meeting appears as document E/C.12/1994/SR.18.

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GE.94-16633 (E)

The public meeting was called to order at 3.55 p.m.

ORGANIZATION OF WORK (agenda item 2) (continued)

Draft general comment on persons with disabilities (continued)
(E/C.12/1993/WP.26)

Paragraph 12 (continued)

1. Mr. GRISSA, reporting on his and Mr. Simma's revision of the paragraph at the request of the Chairperson at the 14th meeting, said that the first sentence should be deleted and that in the third sentence, the phrase ", in the absence of government intervention," should be inserted after the word "instances".

2. The CHAIRPERSON observed that, for logical consistency with paragraph 11, there would also have to be a sentence at the beginning, reading "There is also a second aspect."

3. Paragraph 12, as amended, was approved.

Paragraph 13

4. Paragraph 13 was approved.

Paragraph 14

5. Mr. GRISSA asked what was meant by the term "policy-making", and whether it was restricted to legislating.

6. The CHAIRPERSON said that at the international level the term obviously encompassed the work of committees such as their own or the adoption of programmes of action or standard rules, and at the national level it could mean many things other than legislation, including speeches by prime ministers, national disability plans and the like.

7. Mrs. JIMENEZ BUTRAGUEÑO suggested adding the more specific words "and programmes" after the word "policy-making".

8. The CHAIRPERSON proposed instead the phrase "and programme implementation".

9. It was so decided.

10. The CHAIRPERSON informed the Committee that he had received a suggestion from a group representing persons with disabilities that the second sentence should be amended by inserting the phrase "everything possible be done to facilitate the establishment of such groups and that" before the words "national coordinating committees".

11. It was so decided.

12. Paragraph 14, as amended, was approved.

Paragraph 15

13. Mrs. JIMENEZ BUTRAGUEÑO, supported by Mr. GRISSA, said that she did not see the usefulness of comparing types of discrimination, as was done in the third sentence of the paragraph, and proposed that the sentence should be deleted.

14. It was so decided.

15. Mr. ALVAREZ VITA recalled that, at the June 1993 meeting of the pre-sessional working group, Mr. Kouznetzov had explained in detail his difficulties with the use of the word "discrimination" in paragraph 15. He himself had also made a specific proposal, concerning the reference in the first sentence to the campaign to legalize the termination of the lives of severely handicapped children, a form of invidious discrimination. His proposal had been to insert, after the word "children", the phrase "or of gravely ill persons or physically or mentally handicapped elderly persons"; the point being that the campaign to terminate life was not limited to children. He believed that the issue he was raising needed to be discussed now in plenary session.

16. Mr. GRISSA asked whether the mentally ill could be equated with the handicapped. A disability meant a physical impediment to full functioning in society, but the mentally ill could not be expected to function in society.

17. Mrs. JIMENEZ BUTRAGUEÑO, taking issue with Mr. Grissa's blanket description of the mentally ill as non-functional, said that she had seen many retarded persons, for example, who had been put to work at an appropriate pace in appropriate settings and were acquitting themselves of their functions perfectly well. The mentally ill must not be completely marginalized, any more than persons with other disabilities.

18. The CHAIRPERSON said that the term "disabled" did include mental disabilities, which, however, ranged from minimal impairment to fundamental impairment that precluded rational behaviour. No United Nations group had ever tried to set a line of demarcation, and there was no need to be so specific in the draft general comment.

19. Mr. Alvarez Vita's proposal must be looked at carefully, for he was saying, in effect, that euthanasia was a form of invidious discrimination. Euthanasia was a very difficult matter on which to agree, as was seen from the debate raging in the United States on precisely that issue, with most falling into one of two camps, upholding either the right of choice or the sacredness of life. In the paragraph under consideration, he had in his draft included a reference to the termination of the lives of severely handicapped children because they could not give their informed consent. However, to ask the Committee to go on to equate euthanasia and invidious discrimination was going too far.

20. Mrs. BONOAN-DANDAN said that she agreed with the spirit of Mr. Alvarez Vita's proposed revision but also concurred with the Chairperson that it would be venturing onto dangerous ground and that euthanasia would arouse a controversy that could not be resolved in the Committee. She suggested merely finding a formula that would not exclude those whom Mr. Alvarez Vita had in mind.

21. Mrs. JIMENEZ BUTRAGUEÑO agreed that the text could not speak only of children.

22. Mr. ALVAREZ VITA said, in response to Mr. Grissa, that for him the linguistic distinctions between "disabled", "handicapped" and so on were meaningless, since all meant the same thing. He and Mrs. Bonoan-Dandan seemed to be in basic agreement, but he was amazed by the Chairperson's statement. The right to life was absolute and no one could determine who had that right and who did not. If the text made no mention of the ill or the elderly, the Committee was tacitly approving euthanasia. It was not dangerous ground but difficult ground, and the Committee should not for that reason avoid venturing on it.

23. Mr. RATTRAY said that the text did not lend itself to Mr. Alvarez Vita's interpretation: it referred to "invidious discrimination, such as ...". The reference to terminating the lives of severely handicapped children was merely illustrative and did not exclude other examples. He hoped that in view of the sensitivity of the issue, the Committee would retain the text while at the same time accommodating all views.

24. Mr. GRISSA said that the word "handicap" meant an impediment to functioning. The issue of terminating life came into play in the case of the desperately ill, not merely the handicapped. Why was such a reference included in the text at all? It went beyond the scope of the draft general comment.

25. Mr. ALVAREZ VITA said that his amendment dealt with a highly controversial issue but that such termination of human life had been legalized in some countries, even in western Europe. His position was not based on religious considerations as such but on a fundamental respect for the right to life, an issue he had vigorously defended in his work in Peru.

26. The CHAIRPERSON said that, in the interests of consensus, the phrase in question could be amended to read, "They range from invidious discrimination, such as the denial of educational opportunities to more 'subtle' forms of discrimination ...", thus making no distinction between children and other persons.

27. Mr. ALVAREZ VITA said that he approved of the rewording but that from an ethnical point of view it failed to resolve problems of conscience. The phrase would be acceptable if it were to read "such as the campaign to legalize the termination of the lives of those suffering from severe handicaps".

28. Mr. GRISSA said that the termination of life as included in the text was a strictly medical question and not one of discrimination. Therefore, it was not up to the Committee to dwell on questions of judgement or conscience.

29. Mr. TEXIER said that the question of euthanasia was a subject of fierce controversy in many countries and that it was not for the Committee to become embroiled in a philosophical debate. Therefore, in his opinion, the phrase should be deleted.

30. Mrs. JIMENEZ BUTRAGUEÑO said that she agreed with the substance of Mr. Alvarez Vita's proposal but that countries varied considerably in their customs, culture and indeed practice. She therefore felt that any reference to the termination of life should be deleted.

31. Mr. GRISSA said that he agreed that the debate was leading the Committee away from its strict terms of reference. The salient issues for the Committee were the rights of persons with disabilities to work, education, a decent standard of living and all other rights set forth in the Covenant.

32. Mrs. BONOAN-DANDAN said that the right to life was the very basis for the enjoyment of all rights enshrined in the Covenant and therefore of the utmost relevance to the Committee. Without the phrase referring to the termination of life, the paragraph would have no meaning. Handicapped children were not in a position to give their informed consent or to decide for themselves with regard to the termination of life and it was up to the Committee to ensure that everything possible was done to ensure that they had the right to do so.

33. The CHAIRPERSON said that given the generality of the text and the fact that all texts were inevitably open to interpretation, the sentence should remain unchanged. The issue as formulated in the text was one of discrimination. Taken in that sense it was therefore within the mandate of the Committee, as approved by the United Nations General Assembly and pursuant to article 2 (2) of the Covenant.

34. Mr. GRISSA said that the rights of children as a specific group fell within the remit of the Committee on the Rights of the Child and that the members of the Committee on Economic, Social and Cultural Rights should guard against viewing issues only through the prism of personal beliefs.

35. The CHAIRPERSON said that all members of the Committee were fully entitled to air their own strongly-held opinions and convictions. However, as guardians of the Covenant and experts responsible for its interpretation they should try to look beyond such limitations.

36. Mr. TEXIER said that from the text there was some confusion as to whether the termination of the lives of severely handicapped children also extended to abortion.

37. Mr. ALVAREZ VITA, in response to Mr. Texier's concerns, suggested that the English, French and Spanish texts (E/C.12/1993/WP.26) be harmonized, thus amending the French version to read "enfants" instead of "nouveau-nés".

38. It was so decided.

39. Mrs. BONOAN-DANDAN said that another term should be found in place of "non-disabled people".

40. The CHAIRPERSON suggested that "persons without disabilities" would be more felicitous.

41. It was so decided.

42. The CHAIRPERSON suggested that since there was no consensus on the substance of paragraph 15, the Committee should postpone further consideration of it until the third week of the session.

43. It was so decided.

Paragraph 16

44. Mr. GRISSA considered that the sentence "[Anti-discrimination legislation] should ... provide for social policy programmes which enable persons with disabilities to live an integrated, self-determined and independent life" ran counter to article 5 of the Covenant. Secondly, he questioned whether disabled people could live a self-determined and independent life. If they could, they could hardly be considered disabled.

45. The CHAIRPERSON, pointing out that it was the wording adopted and used by the United Nations, said that the terminology was also intellectually appropriate: nobody was completely self-determined. He himself had to communicate with some members of the Committee through interpreters. To the extent, however, that it was possible for anyone, the armless woman who had inspired the draft general comment did live a self-determined life; she merely asked for unnecessary obstacles to her self-determination to be removed.

46. Mr. GRISSA withdrew his objection.

47. Paragraph 16 was approved.

Paragraph 17

48. Mrs. JIMENEZ BUTRAGUEÑO said that she was unhappy with the wording of the last sentence in Spanish. She suggested that "las políticas en materia de incapacidades" - a clumsy phrase - could be put in inverted commas and that "asegurar" should be replaced by "facilitar".

49. The CHAIRPERSON said that it was a quotation from a General Assembly resolution and as such could not be tampered with. If Mrs. Jimenez found it truly offensive, however, the sentence could be deleted altogether. He himself would prefer to keep it.

50. Mr. CEAUSU asked whether the quotation was necessary at all.

51. The CHAIRPERSON considered that, as coming from the General Assembly, the passage concerned had some weight. In his view the Committee should rewrite United Nations documents only where it found their sentiments problematic. He did not believe that was so in the case of paragraph 17.

52. Paragraph 17 was approved.

Paragraph 18

53. Mr. TEXIER found the first sentence cumbersome, particularly in French: "past discrimination" implied that such discrimination no longer existed. He would therefore redraft the text.

Paragraph 19

54. Mr. ALVAREZ VITA had difficulties with the first sentence, "Persons with disabilities are frequently seen as genderless human beings." The Spanish word - "asexuados" - implied that they were of no sex at all. Following discussions with Mr. Texier and Mrs. Jimenez Butragueño he suggested that the Spanish text should be amended to read "Con frecuencia las discriminaciones afectan con mayor intensidad a las mujeres", with a corresponding change in the English text.

55. The CHAIRPERSON said that he would not insist on the sentence as it stood, but the arresting image had been intended. Some might think that a significantly disabled woman should be grateful simply to be given a wheelchair, but it was essential to acknowledge the fact that she might have sexual needs and desires, which were often overlooked. The word "genderless" was intended to draw attention to precisely that.

56. Mr. JIMENEZ BUTRAGUEÑO considered that the sentence in question was valid as it stood. It drew attention to the fact that disabled women were sexual beings, although they were often seen as not being so.

57. Mr. ALVAREZ VITA granted the force of the example given; but he pointed out that, as noted in paragraph 3, disability was a broad term. There was no reason to think of a person with one hand, for example, or one eye, as genderless or as having no sex life. Such an impression could perhaps be given by a person who was paralysed or had no arms or legs. He feared that "genderless", which suggested a completely asexual being like an angel, would raise a smile among readers of the general comment. He suggested another form of words.

58. The CHAIRPERSON said that the wording was acceptable in English. He suggested, however, that to allay Mr. Alvarez Vita's concern the first sentence could be redrafted as follows: "Persons with disabilities are sometimes treated as though they were genderless human beings."

59. Paragraph 19, as amended, was approved.

Paragraph 20

60. Mr. GRISSA said that no such phrase as "open employment" (line 7) existed. He suggested replacing it with "the employment system".

61. The CHAIRPERSON said that the phrase was intended to distinguish between sheltered workshops and the regular employment market. He suggested that the phrase be amended to read "the regular labour market".

62. Mrs. JIMENEZ BUTRAGUEÑO believed that the paragraph would be strengthened if to the final sentence were added ", en puestos de trabajo adecuados y potenciar al maximo sus capacidades y aptitudes". She knew from her own experience of blind telephonists, deaf and dumb post office sorters and other disabled people who performed their tasks sometimes more efficiently than able-bodied people, perhaps because their disability enabled them to concentrate more fully on the work in hand. States should be urged to encourage disabled people to undertake the very widest range of jobs.

63. The CHAIRPERSON said that one difficulty with Mrs. Jimenez's suggestion was that it ran the risk of stereotyping disabled people. "Persons with disabilities" covered those with both obvious and hidden disabilities. As it stood, the last sentence of paragraph 20 had a very wide application; the suggested addition could be seen as restricting and paternalistic. He believed that disabled people would resent the suggestion that some jobs were appropriate and others were not. He would prefer to keep the wording as it was.

64. Mrs. JIMENEZ BUTRAGUEÑO withdrew her amendment.

65. Paragraph 20, as amended, was approved.

The meeting rose at 5.55 p.m.